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and

For the Union:

On January 8, 2008, in Minneapolis, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by

DECISION AND AWARD
OF
ARBITRATOR

For the Employer:

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unjustly disciplining the grievant, Jane Doe (a fictitious name, used to give her anonymity). Post-hearing briefs were received by the arbitrator on February 23, 2008.

FACTS

The Employer (sometimes the "Hospital") operates an acute-care hospital in St. Louis Park, Minnesota, a suburb of Minneapolis. The Union is the collective bargaining representative of the non-supervisory employees of the Employer who work in classifications the labor agreement describes as "non-professional," such as Nursing Assistant, Linen Aide, Driver and Building Maintenance Mechanic. The current labor agreement between the parties is effective, by its terms, from August 23, 2006, through February 28, 2009.

The grievant has been employed by the Employer for about eleven years, during which time she has worked as a Certified Nursing Assistant. Since 2005, she has worked in the Hospital's Heart and Vascular Center in the pre-operative and post-operative holding area (or, as the parties refer to it, the "Pre-Post Holding Area") where patients receive care just before and just after undergoing heart or vascular surgery. Her duties include such tasks as monitoring patients' vital signs after sedation, maintaining pressure on the femoral artery to assure clotting after surgical invasion of the artery, assisting patients after surgery as they walk, retrieving units of blood, ordering supplies and filing paper work.

The events that led to the grievance occurred during the spring of 2007, when the grievant's scheduled work hours were

from 10:00 a.m. through 6:30 p.m., Monday through Friday. Accordingly, she was not scheduled to work on Saturday, April 28, or Sunday, April 29. She testified that, because she had difficulty sleeping over that weekend, caused by medication she was taking to help abstain from smoking, she reported to the Hospital that she was sick and unable to work on Monday, April 30. The next day, Tuesday, May 1, she worked her normal shift from 10:00 a.m. till 6:30 p.m.

At about 10:00 p.m. that night, the grievant met a friend at a bar-restaurant. She testified that she had three mixed drinks containing rum from about 10:30 p.m. till about 1:45 a.m., when she left the bar, and that, because she felt "buzzed" from the alcohol, she sat in her car in the bar's parking lot till 3:00 a.m. She started driving home, but, en route, she was stopped by a St. Louis Park Police Officer, who, after noticing a strong odor of alcohol on her breath, asked her how many drinks she had had. She responded, "a few," but, when asked to explain, she said, "six to eight mixed drinks." The Police Officer administered a field breathalyzer test at about 3:00 a.m., which measured her blood alcohol content at 0.142%, a percentage greater than the statutory limit for driving a motor vehicle, 0.08%. The Police Officer drove her to a St. Louis Park Police Station, where she was given another breathalyzer test, which measured her blood alcohol content at 0.12%. She was charged with Driving Under the Influence of alcohol ("DUI").

At about 4:45 a.m., that morning, Wednesday, May 2, a friend drove the grievant from the Police Station to her

friend's home. Later that morning, the grievant telephoned her supervisor, Barry W. Burrell, Manager of the Pre-Post Holding Area, and left a voice-mail message that she would not be reporting for work that day because she had been charged with DUI and had been in jail. Later that day, Burrell called the grievant back, told her to contact the Hospital's Employee Health Services ("EHS") and said that she was on administrative suspension.

Later on May 2, the grievant met with Marilyn J. Paulson, a Registered Nurse who works in the EHS. Paulson testified that, when an employee has drug or alcohol problems that may affect work performance, the EHS may refer the employee to Midwest Employee Assistance Programs ("Midwest EAP"), an entity independent of the Hospital, for chemical dependency evaluation. On Thursday, May 3, the grievant met with Julie A. Wettstein, an independent alcohol and drug counselor, who is often used as a consultant by Midwest EAP.

Wettstein testified that she has been a licensed alcohol and drug counselor since 2000, that she has twenty-two years of experience in the field, that she has done about 400 chemical dependency assessments in the last three years and that she is the head clinician and Program Director of an in-house treatment program. Upon request, she does chemical dependency assessments for Midwest EAP and others.

In addition, Wettstein testified that, when she met with the grievant on May 3, she interviewed her about her use of alcohol and the circumstances that led to her referral for

assessment. Wettstein administered two standard tests -- the McAndrews Scale and the Michigan Alcohol Screening Test (the "MAST"). Based on these tests and her interview of the grievant, Wettstein used the Diagnostic and Statistical Manual of Mental Disorders to diagnose the grievant as "alcohol abusive," in contrast to the more severe diagnosis of "alcohol dependent." Wettstein testified that, on the McAndrews Scale, the grievant registered as "having a tendency toward alcoholism/addiction prone" and that, on the MAST, she registered as being in the early stages of alcoholism. From Wettstein's interview of the grievant, she learned that the grievant is taking an anti-seizure medication, Lamiztal, for epilepsy, and an anti-depressant medication, Celexa, for depression. Wettstein testified that websites for these drugs recommend that a person taking them should avoid alcohol.

Wettstein's evaluation report shows the following printed question and Wettstein's notes giving the grievant's response:

Now that we have completed your assessment, do you believe you have [an alcohol abuse] problem? If so, why?

No, cause I'm not that girl -- that's just not in me -- I can be happy and social w/o drinking.

Part of Wettstein's Assessment Summary, which she sent to Paulson on May 3, is set out below:

IMPRESSIONS: [The grievant] was cooperative during this process and with this reporter. [Her] scores on the two independent testing batteries appeared to be consistent with her self-reporting. [She] authorized releases of information to four additional sources to provide additional collateral contacts due to the "safety sensitivity" of her career (i.e. nursing assistant). [Her] assessed issue, testing results, and recommendations were discussed

with her. [She] agreed to "Accept" the recommendations offered as a result of this chemical health evaluation. [She] stated she believes she is able to perform her duties as a Nursing Assistant for her employer.

RECOMMENDATIONS:

1. Abstinence from alcohol use.
2. Enrollment in an adult alcohol education course (i.e. Level I status with either 6-8 hours of programming) to be completed within the next 60 days, documented. The Operations Foresight and River Ridge programs were offered as resources. . . .
3. Continuation of individual therapy.
4. Continuation of medication monitoring by the prescribing physician.
5. Remain fully law-abiding.
6. Full abidance of all legal accountabilities.
7. Explore AA meetings (i.e. a minimum of four meetings documented). [She] was given meeting information to support her in completion of this recommendation.
8. Alcohol testing to continue to verify [her] use status on the following schedule: at least 3 random tests the first three months, then at least 3 random tests the following six months, then at least 2 random tests the following six months, then at least 1 random test the following six months then a return to random alcohol testing pool OR full compliance with her employer's pre-existing alcohol and drug testing schedules, policies, and procedures.
9. And in the event any of the following occur: [She] experiences challenges with remaining fully abstinent from alcohol use, or undisclosed information is discovered that either contradicts [her] self-reporting, or if [she] has deliberately omitted or minimized her alcohol and/or chemical use (i.e. including substances and patterns), or performance issues that are alcohol and/or substance-related occur, or further life consequences occur that are due to chemicals then a return to chemical health assessor for possible placement in a chemical dependency program is recommended.

Wettstein was present during the grievant's testimony.

Wettstein testified that the grievant's testimony described heavier use of alcohol than she had disclosed to Wettstein and that, if Wettstein had been aware of that history, she would have recommended a program of out-patient chemical dependency treatment. On cross-examination, Wettstein testified that most of her clients are not referred to her by an employer, that

people who abuse alcohol do recover, that her recommendation of permanent abstinence was not a "requirement" and that, as she understands the Return to Work Plan, described below, it does not require permanent abstinence from alcohol.

The grievant returned to work on Friday, May 4. On the next Wednesday, May 9, she met with Paulson, Burrell and Naomi Banks, a Human Resources representative. No Union representative was present during the meeting. The grievant did not request Union representation, and she was not informed that she could make that request. She testified that she was given a document entitled, "Return to Work Plan" (sometimes, merely the "Plan"), and that the management representatives told her that if she did not sign it she would be discharged. Relevant parts of the Plan are set out below:

This is a work plan for [the grievant's name].

Because my abuse of drugs and/or alcohol has had an impact on my employment at Park Nicollet Health Services (PNHS), I understand that my return to work at PNHS is subject to the following conditions:

- A) I will enroll in an adult alcohol education course (i.e. Level I status with either 6 or 8 hours of programming) to be completed within the next 60 days, documented.
- B) I agree to consult with the [EHS] at any time I feel unable to follow the conditions of this Plan for Return to Work Agreement.
- C) I have authorized the individuals involved in my treatment for drug and/or alcohol abuse to provide and exchange information related to my treatment with [EHS] and will continue to cooperate in the process of exchanging relevant information. A copy of my authorization is attached.
- D) I will be asked to submit to blood and/or urine testing, without prior notice, in accordance with

PNHS's Policy on Drug and Alcohol Testing. I understand this means that I may be tested without prior notice during the evaluation and/or treatment period and for a period of up to two years following the referral for chemical dependency and/or evaluation. I also understand that as an employee of PNHS I may be asked to submit to drug and/or alcohol testing on the basis of "reasonable suspicion" in accordance with PNHS's Drug and Alcohol Testing policy.

E) I understand that testing for drugs and/or alcohol as described in paragraph D is part of my recovery and treatment, and agree to it as such.

F) I agree to comply with the following:

1. Abstain from all alcohol use.
2. Enroll in an adult alcohol education course and complete it in the next 60 days. Documentation must be submitted to [EHS].
3. Continue individual therapy.
4. Continue medication monitoring by the prescribing physician.
5. Remain fully law-abiding.
6. Full abidance of all legal accountabilities.
7. Explore AA meetings with a minimum of four meetings documented.
8. Random alcohol testing in full compliance with PNHS's policies and procedures.
9. To return to a chemical health assessor for possible placement in a chemical dependency treatment program if any of the following occur:
 - Experience challenges remaining fully abstinent from alcohol use.
 - Undisclosed information is discovered that contradicts my self-reporting.
 - If I have deliberately omitted or minimized my alcohol and/or chemical use.
 - If I have performance issues that are alcohol and/or substance related.
 - Further life consequences occur that are due to chemicals.

G) I agree not to abuse drugs and/or alcohol, in accordance with the restriction contained in PNHS's Drug and Alcohol Testing policy, to abide by the policy in all respects, and to follow the recommendations of the chemical health evaluator.

I understand that I may be disciplined or dismissed from my employment with PNHS if I refuse to submit to or cooperate with requests for drug and/or alcohol testing as described in paragraph D, or if the test result is

confirmed positive. I also understand that I may be disciplined or dismissed from my employment with PNHS for reasons of job performance, attendance, or other work-related behaviors on the same basis as other employees, whether or not caused by illegal drug and/or alcohol use and whether or not discovered through illegal drug and/or alcohol testing.

By signing below I indicate that I agree to the terms of this Work Plan, that failure to comply with any element of this plan may result in imminent termination and that I have received a copy of PNHS's Drug and Alcohol Testing Policy, along with a copy of this Agreement.

The grievant, Paulson, Burrell and Banks signed this document, and the grievant signed two attached forms, also dated May 9, 2007 -- one of which states that she received a copy of the Drug and Alcohol Testing Policy and had an opportunity to read it and ask questions about it that were answered to her satisfaction, and the other of which consents to "random/post-treatment alcohol and drug testing."

The meeting of May 9 continued after the discussion relating to the Return to Work Plan and after the grievant executed it, but Paulson left the meeting, leaving the grievant, Burrell and Banks present. Burrell then issued a written warning to the grievant, using a printed form with spaces for inserting text related to the specific warning being given. Where the printing states "Describe Issue," Burrell wrote:

1. Exceeds Human Resources policy for absenteeism. Period, 2-19-07 through 5-3-07. 5 absences in 39 days of scheduled work = 12% absenteeism.
- 2 Explained the new valium policy to 3 east nurse. Out of your scope of practice.

Burrell testified that he did not intend the part of this warning that relates to attendance to include the grievant's absence on May 2. He also testified that the grievant did not lose any compensation for the days she was absent, May 2 and 3.

On May 11, the grievant entered a plea of guilty to the DUI charge. She was fined \$300 and sentenced to serve thirty days in jail. The imprisonment was suspended on condition that she perform two days of community service. She was also ordered to complete a chemical dependency assessment -- a condition deemed by the court to have been fulfilled by Wettstein's assessment of May 3 -- and to follow its recommendations.

On May 22, 2007, the Union brought the present grievance in behalf of the grievant. Excerpts from the grievance are set out below (printed text underlined):

Subject of Grievance: Unjust Discipline
Grievance/Violation (Article or Section violated):
Including but not limited to Article I, IX

The Employer unjustly issued an unjust discipline on an issue that does not have any impact on the employee relationship, and/or patient care.

Desired Remedy: [The grievant] should not be subjected to a discipline by the Employer, and the Employer needs to rescind the return to work plan and any other documentation or discipline related to this matter and make the grievant whole.

The following provisions of the labor agreement are relevant to the parties' arguments:

ARTICLE I
UNION REPRESENTATION

Section D. No Contradictory Rule. The Employer agrees not to enter into any agreement or contract with its employees (who are in classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this Agreement. No statement or rule shall be made or established by the Employer or the Union that conflicts with or contradicts any of the provisions of this Agreement.

ARTICLE IX
CORRECTIVE ACTION/DISCIPLINE AND DISCHARGE

Section A. The Employer shall not discharge or suspend an employee without just cause. Drunkenness on the job,

bringing intoxicating liquor on the premises, use of drugs or dishonesty or infraction of rules directly affecting patient comfort or safety shall be considered grounds for discharge.

Section B. Notice of Corrective Action/Discipline and Discharge. A written notice of any corrective/disciplinary action shall be given to the employee. Verbal warnings shall be confirmed in writing. A copy of any suspension or discharge notice shall be sent to the Union, and copies of verbal or written warnings shall be furnished to the Union upon request. The Union may file a grievance relating to such corrective/disciplinary action. Such grievance must be filed consistent with the Grievance and Arbitration Procedure, except that a suspension or discharge may be initiated at Step 2.

ARTICLE XIX MANAGEMENT RIGHTS

Except as specifically limited by the express provisions of this Agreement, the management of the Hospital, including but not limited to, the right to hire, lay off, promote, demote, transfer, discharge or discipline for just cause, require observance of reasonable Hospital rules, and regulations, direct the working forces and to determine the materials, means and type of service provided, shall be deemed the sole and exclusive functions of management.

DECISION

The Employer argues that the premise of the grievance -- that the grievant was disciplined -- is unfounded. It urges that it imposed no discipline related to the grievant's use of alcohol or her arrest for DUI on May 2. In support of this argument, Mark R. Nordby, the Employer's Director of Labor Relations, testified as follows. He does not consider the Return to Work Plan to be discipline. It was not placed in the grievant's personnel file; rather, it is kept in the grievant's occupational health file at EHS. She lost no pay, even for her absences on May 2 and 3.

Burrell and Nordby testified that the requirement that the grievant abide by the Plan has a non-disciplinary purpose

-- to foster her occupational health -- a purpose in which the Employer has an employment-related interest. They testified as follows. Because of the critical nature of the work the grievant is performing in the Pre-Post Holding Area, she should be required to abstain from alcohol. Her use of alcohol away from the work place may cause her to be fatigued or careless while working, even after the directly intoxicating effects of alcohol have dissipated. The health of patients would then be at risk, and the Hospital would have an increased risk of liability. The grievant was neither suspended nor warned because of her use of alcohol or her DUI arrest. Though she was given a written warning at the end of the meeting of May 9, that warning was for matters unrelated to her arrest or to the events that followed her arrest.

The Union argues that the grievant's execution of the Plan was not voluntary and that, as the Plan itself states, she was required to sign the Plan as a condition of her returning to work. As I understand the Union's argument, it urges that, in effect, the Employer's requirement that she sign the Plan was a constructive discharge with reinstatement to employment conditioned on her execution of the Plan -- a forced execution of a "last chance agreement."

The Union also argues that the grievant suffered "double jeopardy," i.e., that the Employer disciplined the grievant twice for the same conduct -- once when it required her to sign the Return to Work Plan and a second time when she was given a written warning for being absent on several occasions, including her absence on May 2.

I rule that the requirement that the grievant sign the Return to Work Plan was discipline or "corrective action." The evidence shows clearly that she was informed -- by the terms of the Plan itself and by the management representatives in attendance at the meeting of May 9 -- that if she did not agree to the Plan she would not be permitted to work again. The grievant testified that she signed the Plan because she was told that she must do so to retain her employment. Indeed, Nordby conceded on cross-examination 1) that the grievant was required to sign the Plan as a condition of her returning to work and 2) that, if she failed to adhere to the Plan, she may face immediate discharge.

I recognize, as Nordby and Burrell testified, that their purpose in requiring the grievant to sign and adhere to the Plan was to reduce the risk of unsafe work performance caused by any residual symptoms she may experience from off-duty consumption of alcohol. I agree that, as the Employer argues, it has an interest in diminishing that risk, not only with respect to the grievant's performance, but with respect to the performance of any employee.

That the Employer had such an interest, however, does not make the requirement that the grievant sign and adhere to the Plan non-disciplinary. Indeed, employers must have a purpose reasonably related to performance for any discipline, where a labor agreement requires just cause. The grievant was told that she would not be allowed to return to work if she did not sign the Plan, and she was warned that if she failed to abide by the

Plan she would face immediate discharge. These threats to her employment were directed at her as an individual and not to other Nursing Assistants. Though all employees of the Hospital are subject to the Employer's Drug and Alcohol Testing Policy, the Employer has no policies or rules that impose on other Nursing Assistants the more stringent requirements of the grievant's Return to Work Plan.

I disagree with the Union's argument that the grievant was disciplined twice for the same conduct -- by being warned about absences that included her absence on May 2 and by being required to execute the Return to Work Plan. The Union argues that I should reject Burrell's testimony that he did not intend to include the absence of May 2 in the group of absences covered by the warning of May 9, because that testimony contradicts clear written evidence -- both the warning itself and records showing that, in order to reconcile the total absences listed on the warning, the absence of May 2 must have been included. I accept this argument of the Union that Burrell intended to include May 2 in the absences covered by the warning of May 9. Nevertheless, I rule that that warning for absence was discipline directed at conduct different from the conduct at which the Return to Work Plan was directed, i.e., that the warning was directed at the grievant's absence, while the requirement that she execute and abide by the Plan was directed at her off-duty use of alcohol, which the Employer sought to eliminate in order to reduce the risk of unsafe work performance.

The Employer makes the following argument. Article IX, Section A, of the labor agreement limits the Employer's right to "discharge or suspend an employee without just cause" and, by requiring just cause for only these two kinds of discipline, the provision implies that other kinds of disciplinary action may be imposed without adherence to the just cause standard.

For the following reasons, I rule that the labor agreement requires all forms of discipline -- or corrective action, the equivalent of discipline -- to meet the just cause standard. Article IX, Section B, provides that the Union may grieve any "corrective/disciplinary action." As noted just above, Article IX, Section A, establishes just cause as the standard for determining grievances challenging a discharge or a suspension. Neither Section A nor Section B of Article IX specifies the standard to be used in determining grievances that challenge other forms of discipline or corrective action. By making other forms of discipline subject to challenge without specifying the standard to be used in resolving the challenge, Article IX creates an ambiguity.

That ambiguity can be resolved by applying a primary principle of contract interpretation -- that the meaning of ambiguous provisions should, if possible, be derived from a reading of the entire agreement. Article XIX provides that "the management of the Hospital" has the right to "discharge or discipline for just cause," thus stating the parties' agreement that grievances challenging discharge or any other form of discipline are to be determined by application of the just cause standard.

Accordingly, I rule that Article IX, Section B, read in concert with Article XIX, requires that the Employer have just cause to oblige the grievant, on condition of her continued employment, to sign the Return to Work Plan.

An employer has just cause to administer discipline if the discipline imposed is reasonably related to the conduct that it would correct. The following considerations may bear upon the determination whether a particular penalty is reasonably related to particular conduct.

First. The conduct for which an employer imposes discipline must be conduct that has an adverse effect on operations. In the present case, the Employer based the discipline at issue -- the requirement that the grievant sign and adhere to the Return to Work Plan -- on her off-duty conduct, i.e., her arrest for DUI on May 2 and her history of alcohol abuse. The Employer argues 1) that, because the grievant works in the Pre-Post Holding Area, she must be alert and attentive while performing her duties and 2) that her off-duty consumption of alcohol may interfere with that job requirement. The Union argues that, to justify discipline for off-duty conduct, the conduct must have a discernable adverse effect on operations.

Second. In determining whether the relationship between conduct and discipline is reasonable, the past record of the employee being disciplined may be a relevant factor because an employee with a good record is presumably more amenable to correction by a less severe penalty. The evidence shows that the grievant's job performance has been consistently above

average. She has, however, received numerous warnings for a very poor record of attendance; she has not been disciplined for any other reason.

Third. The penalty imposed should not be more onerous than is reasonably necessary, under the relevant circumstances, to correct conduct adverse to operations. The Union argues that the Return to Work Plan is clearly unreasonable because it imposes sweeping and perpetual conditions on the grievant's off-duty behavior. The Union urges that the recommendations made by Wettstein are typical of those a counselor might make to assist a chemically dependent client to abstain from alcohol and that, as such, they recommend changes in behavior that far exceed the legitimate operational interests of the Employer. In addition, the Union argues that the Employer adopted all of those recommendations even though they have no reasonable relationship to the grievant's history of above average job performance.

The Employer argues that the requirement that the grievant sign and abide by the Plan was a reasonable response to the grievant's conduct. It urges that, if the grievant follows the Plan, which merely adopts Wettstein's recommendations, the Hospital will not be subject to the risk of errors in critical care that may be caused by her off-duty use of alcohol.

I make the following rulings. Conduct, whether off-duty or on-duty, that affects safe performance in the Pre-Post Holding Area or any other part of the Hospital is sufficiently connected to the Employer's operational interests to permit the imposition of reasonable discipline. Thus, it is clear that an

employee would be subject to reasonable discipline if he or she is under the influence of alcohol while working -- whether the alcohol was consumed before or during the hours of work.

In the present case, the evidence shows that the grievant's drinking during the evening on May 1 and the early hours of May 2 caused her absence from work on May 2. Of course, because she was absent that day, that drinking could not affect her work. Thus, the particular conduct that led to the grievant's DUI arrest did not affect safety in the Pre-Post Holding Area.

Properly understood, however, the Employer's requirement that the grievant sign and adhere to the Plan is based not merely on that single example of alcohol abuse. Rather, it is based on the grievant's history of off-duty alcohol consumption, on Wettstein's assessment that she is alcohol abusive and, most importantly, on a judgment that the grievant's off-duty drinking will have an adverse effect on operations by putting the Hospital at risk that the grievant's future performance will be unsafe.

To meet the standard of just cause, that judgment must be reasonable, considering relevant circumstances, and, as the Union argues, the "connection between the off-duty misconduct and the injurious effect on the business must be reasonable and discernable and not merely speculative," citing Elkouri and Elkouri, How Arbitration Works, 939 (6th Ed. 2003). In addition, the discipline imposed must be reasonably related to the purpose of preventing the adverse effect on operations that the Employer expects from the grievant's off-duty conduct.

The off-duty conduct on which the Employer based the discipline was the grievant's history of alcohol abuse, including the intoxication that led to her DUI arrest, and I accept the Employer's argument that it was proper to include all of that history in determining what discipline to impose.

Nevertheless, for the following reasons, I rule that the requirements of the Return to Work Plan are not reasonable. They exceed what, in the circumstances, is reasonably necessary to prevent unsafe performance by the grievant. The evidence does not show that her consumption of alcohol has affected the manner in which she has performed the critical care tasks done in the Pre-Post Holding Area since her transfer there in 2005. Indeed, the evidence shows that the grievant's performance has been above average, both before and after that transfer, with some supervisors describing her as a "role model." Presumably, her record of past performance is at least equal to that of other Nursing Assistants in the Pre-Post Holding Area, none of whom is bound by requirements similar to those of the Plan. Thus, there is no indication in the evidence that the grievant's history of alcohol use has led to unsafe performance in the past. On this record, the judgment upon which the discipline is based -- that her history of alcohol use may lead to future unsafe performance -- fails to meet the requirement that the connection between off-duty conduct and an adverse effect on operations be "discernable and not merely speculative."

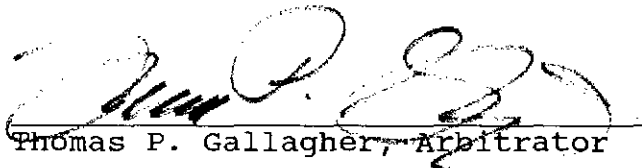
I conclude that the requirement that the grievant sign and adhere to the Return to Work Plan was discipline and that the Employer did not have just cause to impose that discipline.

The grievant is subject, as are other employees, to the Employer's Policy on Drug and Alcohol Testing. I do not intend that this decision foreclose the Employer from using the grievant's history of alcohol use as a basis for "reasonable suspicion" testing, insofar as that history may be a basis for such testing under the terms of the Policy and relevant law.

AWARD

The grievance is sustained. The requirement that the grievant adhere to the Return to Work Plan is rescinded.

April 24, 2008


Thomas P. Gallagher, Arbitrator